

Shenandoah Coal Company and United Mine Workers of America and District 28, United Mine Workers of America. Case 11-CA-13282

August 31, 1993

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On January 8, 1992, the National Labor Relations Board issued a Decision and Order in this proceeding¹ ordering the Respondent, Shenandoah Coal Company, to, inter alia, offer reinstatement to employees Glen Cook, Joe Horne, Rockie Meadows, Todd Meadows, and Peck Ray, and to make them whole for any losses suffered as a result of the Respondent's discriminatory unfair labor practices against them. On June 2, 1992, the United States Court of Appeals for the Fourth Circuit enforced the Board's Order in full.² On March 31, 1993, the Regional Director for Region 11 issued a compliance specification and notice of hearing alleging that a controversy had arisen over the amount of backpay due under the terms of the Board's Order and notifying the Respondent that it must file an answer complying with the Board's Rules and Regulations within 21 days of service of the backpay specification.

On April 21, 1993,³ the Respondent filed an answer admitting in part and denying in part the compliance specification and submitting an affirmative defense. On May 5, by telephone, the General Counsel advised the Respondent that the portions of its answer denying the matters set forth in paragraphs 1, 2, and 3 of the compliance specification were insufficient based on Section 102.56(b) of the Board's Rules and Regulations. On May 11, the Respondent filed an amended answer to the compliance specification. The General Counsel on that date advised the Respondent by telephone that its amended answer to paragraphs 1, 2, and 3 of the compliance specification was similarly insufficient and that in the absence of an appropriate answer by the close of business on May 13, the General Counsel would seek summary judgment as appropriate. On May 12, the Respondent informed the General Counsel, by telephone, that no further answer would be filed.

On May 14, the General Counsel filed with the Board a Motion for Partial Summary Judgment with respect to the computation of gross backpay, with exhibits attached. The General Counsel alleges that the Respondent's answers to the allegations in paragraphs 1, 2, and 3 of the compliance specification regarding the computation of gross backpay do not meet the specificity requirements of Section 102.56(b) of the Board's Rules and Regulations. On May 18, the Board

issued an order transferring the proceeding to the Board and Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent did not file responses to the Motion for Partial Summary Judgment or to the Notice to Show Cause.

On the entire record in this case, the Board makes the following

Ruling on Motion for Partial Summary Judgment

Section 102.56(b) and (c) of the Board's Rules and Regulations states in pertinent part:

(b) . . . As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) . . . If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

The Memorandum in Support of Motion for Partial Summary Judgment submits that the Respondent has failed to comply with the Board's Rules in that its amended answer does not set forth specifically the basis for disagreement and the Respondent's position as to the applicable premises including the appropriate supporting figures.

We agree with the General Counsel's contentions. The matters denied concern the various factors entering into the computation of gross backpay, subjects that are within the Respondent's knowledge.⁴ As to these matters, the rules require more than a general denial. The Respondent must specifically state the basis for disagreement, setting forth in detail its position as to the applicable premises and furnishing the appropriate supporting figures. See *Best Roofing Co.*, 304 NLRB 727, 728 (1991). The Respondent's amended answer to paragraphs 1 and 2 of the compliance specification de-

¹ 305 NLRB 1071.

² No. 92-1307 (unpublished).

³ All dates hereafter are in 1993.

⁴ Par. 1 alleges the computational method used to arrive at quarterly gross backpay. Par. 2 alleges the average hours worked by representative employees during the backpay period. Par. 3 alleges the hourly wage increases that the Respondent would have given to certain of the discriminatees during the backpay periods.

nies that the formula and figures set forth are accurate for the computation of gross backpay on the grounds that “the employees utilized by the Region are not representatives.” The amended answer is deficient because it does not elaborate further, and fails to explain why the employees considered by the Region are not representative of the discriminatees.⁵ The Respondent’s answer to paragraph 3 merely denies the hourly wage increases that would have been given to certain of the discriminatees during their respective backpay periods, as alleged in the compliance specification. The amended answer does not set forth what the Respondent believes the hours and rates of pay for the discriminatees should have been calculated to be and the basis for that calculation.

The compliance specification served on the Respondent specified that the Respondent should file an answer to the compliance specification, and that “[T]o the extent that such answer fails to deny allegations . . . in the manner required under the Board’s Rules and Regulations and failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true.” As the Respondent has failed to

deny the gross backpay allegations in the manner prescribed in Section 102.56(b) and (c) or to explain adequately its failure to do so, Section 102.56(c) requires that such allegations be deemed admitted to be true. Accordingly, we shall grant the General Counsel’s Motion for Partial Summary Judgment as it pertains to the gross backpay allegations of paragraphs 1, 2, and 3 of the compliance specification. The Respondent is precluded from introducing any evidence controverting these allegations.

ORDER

It is ordered that the General Counsel’s Motion for Partial Summary Judgment is granted as to the allegations contained in paragraphs 1, 2, and 3 of the compliance specification.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 11 for the purpose of arranging a hearing before an administrative law judge on the remaining allegations contained in the compliance specification.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a decision containing findings, conclusions, and recommendations based on all the record evidence. Following the service of the administrative law judge’s decision on the parties, the provisions of Section 102.46 of the Board’s Rules and Regulations shall apply.

⁵See *Structural Finishing*, 296 NLRB 439, 440 (1989) (respondent’s answer to the gross backpay allegations inadequate where it failed to, inter alia, submit reasons why the hours set forth in the specification were not representative of the hours the discriminatees would have worked during the backpay period).